

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 288

SPONSOR: Judiciary Committee, Criminal Justice Committee and Senator Lynn

SUBJECT: Right to Speedy Trial

DATE: April 13, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AAV</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill grants state attorneys under certain circumstances the right to demand speedy trial in trial court for misdemeanor and felony cases. This bill provides certain time limitations for trials to commence, and authorizes extensions by the court in certain cases.

This bill creates a new section of the Florida Statutes.

II. Present Situation:

Constitutional Provisions

Article I, Section 16 of the Florida Constitution guarantees an accused the right to a “speedy and public trial” by an impartial jury.

It also provides that victims or their lawful representatives “are entitled to the right to be informed, present, and heard when relevant, at all crucial stages of criminal proceedings, *to the extent that these rights do not interfere with the constitutional rights of the accused.*”

The Sixth Amendment to the Federal Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial....

The U.S. Supreme Court applied the Bill of Rights to state actions through due process guarantees under the Fourteenth Amendment, U.S. Constitution. From 1962 to 1969, the Supreme Court incorporated a variety of protections for criminal defendants, including the Fifth Amendment rights against self-incrimination and double jeopardy, Sixth Amendment right to

counsel, right to confront adverse witnesses, right to a speedy trial, right to have compulsory process for securing defense witnesses, and the right to a jury trial.

For each of these amendments, the Supreme Court asked whether a right is one of the fundamental principles of liberty and justice which are at the core of all our civil and political institutions, basic in our jurisprudence system, and a fundamental right that is critical to a fair trial.¹

Statutory Provision

Section 918.015, F.S. provides the following:

“(1) In all criminal prosecutions the state and the defendant shall each have the right to a speedy trial.

(2) The Supreme Court shall, by rule of said court, provide *procedures* through which the right to a speedy trial as guaranteed by subsection (1) and by s. 16, Art. I of the State Constitution, shall be realized.” (emphasis added)

Section 918.015, F.S., was amended to add subsection (2) in 1971. Subsequent to that, the Supreme Court adopted procedures regarding a defendant’s speedy trial rights. However, procedural aspects of a State right to a speedy trial were not addressed. It should be noted that there is no constitutional right for the State to have a speedy trial, in Florida or in the Federal Constitution.

Rule of Procedure – Speedy Trial Without Demand

Florida Rule of Criminal Procedure 3.191(a) requires every person charged with a crime by indictment or information to be brought to trial within 90 days if the crime charged is a misdemeanor, or within 175 days if the crime charged is a felony. The time periods established begin when the defendant is taken into custody. If a trial is not begun within the appropriate time period, the defendant may file a “Notice of Expiration of Speedy Trial Time.” No later than five days from the date of this notice, the judge must conduct a hearing and unless the judge finds that a reason set forth by the rule exists, must order that the defendant be brought to trial within 10 days. If the defendant is not brought to trial within 10 days through no fault of the defendant, upon motion of the defendant or the judge, the defendant shall be forever discharged from the crime.

Rule of Procedure - Speedy Trial Upon Demand

Rule 3.191(b) authorizes a defendant to demand a trial within 60 days of indictment or the filing of an information by filing a “Demand for Speedy Trial.” The trial court must then hold a calendar call within five days and at the calendar call, set the case for trial within 5 to 45 days. If the defendant is not brought to trial within 50 days of the filing of the demand, the defendant may then file a “Notice of Expiration of Speedy Trial Time.” No later than five days from the date of this notice, the judge must conduct a hearing and unless the judge finds that a reason set forth by the rule exists, must order that the defendant be brought to trial within 10 days. If the

¹ James L. Wright and M. Matthew Williams, *Remember the Alamo: The Seventh Amendment of the United States Constitution, The Doctrine of Incorporation, and State Caps on Jury Awards*, 45 S. Tex. L. Rev. 449, 482 (2004).

defendant is not brought to trial within 10 days through no fault of the defendant, upon motion of the defendant or the judge, the defendant shall be forever discharged from the crime.

Trial Docket Management and State Attorney Data

Management of a trial docket falls within the court's purview. The court itself must operate within the rules of court and the Constitution to effectuate the timely disposition of cases on its docket. The accused has the constitutionally guaranteed right to a speedy trial, and the Supreme Court of Florida adopted a court rule, at the behest of the Legislature in ch. 71-1, L.O.F., to "enforce" that right at the procedural level.

The court does not "control" a case until the case is filed by the State Attorney. The State Attorney (or Attorney General) carries out its executive functions prior to the filing of the case, and continues those functions through to the end. But, at the point where a case is filed, the "administrative" or procedural aspects become the court's responsibility. The court is the arbiter of disputes regarding the admission of evidence, the interpretation of relevant case law and statutes, and the application of the procedural aspects of a case.

When a party is not ready for trial, they may request that the court grant a continuance. Sometimes the defense and the State stipulate, or agree, to a continuance because neither party is ready. Delays occur for a variety of reasons, including:

- Inability to schedule depositions due to a lack of time or availability on the Court Reporter's calendar; scheduling conflicts between the parties; witness calendar conflicts.
- Awaiting processing of evidence by laboratories.
- Inability to locate witnesses.
- Newly discovered evidence or witnesses that have come forward at the last minute.
- A prosecutor or a defense attorney has a trial schedule that is already full (most likely another prosecutor could step in and try the case if it is not complex or doesn't require a special rapport with a victim or witness – the same is not true for a defense attorney, as his or her absence would likely result in a postconviction motion or appeal based on the grounds that defense counsel was ineffective).

There also may be reasons for delays such as logistical issues involving courtroom availability or the availability of a judge. More and more judicial circuits report the need to utilize the services of retired judges to help courts manage their dockets.

Once a defendant requests a continuance, the right to a speedy trial is waived. The case can then be tried at the convenience of all parties. This results in the case being "bumped" off the trial docket in deference to those in which the right to a speedy trial still looms, or those that, for whatever reason, have garnered more attention.

If the State objects to a continuance, this should indicate to the court that the State is ready for trial and doesn't perceive any good reason to put the trial off. The court presumably then looks to the defense for some defensible reason for a delay of the trial. But, ultimately, it is the court's prerogative to grant or deny the continuance. The court must bear in mind that the defendant is entitled to a *fair trial*, one at which his or her attorney is *fully prepared*, and all of the *available*

evidence is in a posture to be presented on the defendant's behalf. This is a court decision, based on the arguments of counsel, and subject to appeal.

One State Attorney has presented data to committee staff that represents types of criminal cases, and the "age" of the cases, that are currently *pending and ready for trial* in his circuit. He indicates that on any given month there are routinely 105 cases pending in that posture. These data are presented in the table below:

Examples from the Seventh Circuit				
	Charge	Number of Continuance	Date of Arrest	Time Since Date of Arrest Until 3/11/04
1	Possession Cocaine	x 9	09/01/02	1 yr 06 mo 09 day
2	Agg. Manslaughter of Child	x 6	09/11/02	1 yr 05 mo 30 day
3	Att. Rob w/weapon; etc.	x 5	09/13/02	1 yr 05 mo 28 day
4	Agg. Child Abuse	x 14	09/28/02	1 yr 05 mo 13 day
5	Child Abuse	x 5	10/07/02	1 yr 05 mo 04 day
6	Att. 1st deg murd (firearm) of LEO	x 3	10/09/02	1 yr 05 mo 02 day
7	Armed rob w/weapon	x 4	10/29/02	1 yr 04 mo 13 day
8	DWLS (habit); fle/eld	x 7	10/30/02	1 yr 04 mo 12 day
9	Leaving scene w/death	x 6	11/04/02	1 yr 04 mo 07 day
10	Sex Batt. And Lewd Lasc.	x 5	11/06/02	1 yr 04 mo 05 day
11	Child Abuse x 2	x 4	11/11/02	1 yr 04 mo 00 day
12	Intro Contra; tamper w/e; poss etc.	x 5	11/21/02	1 yr 03 mo 20 day
13	Robbery x 2; flee/att. Elude; Carjack x 2; agg batt. LEO; robbery w/deadly weap.	x 6	11/21/02	1 yr 03 mo 20 day
14	Grand Theft x 3	x 12	12/01/02	1 yr 03 mo 10 day
15	Agg. Child Abuse	x 5	12/12/02	1 yr 02 mo 30 day
16	Felony Batt.	x 9	12/19/02	1 yr 02 mo 23 day
17	Burg. Dwell (armed); Rob w/ f/a	x 14	12/20/02	1 yr 02 mo 22 day
18	Fel Batt.	x 6	12/25/02	1 yr 02 mo 17 day
19	Grand Theft (Motor veh)	x 7	12/25/02	1 yr 02 mo 17 day
20	Agg. Batt deadly weapon	x 12	12/30/02	1 yr 02 mo 11 day
21	Battery & Agg. Batt w/deadly weap	x 13	01/05/03	1 yr 02 mo 06 day
22	Kidnapping; att. 2nd murder etc		01/12/03	1 yr 01 mo 27 day
23	Trafficking in Cocaine	x 8	01/25/03	1 yr 01 mo 14 day
24	DUI w/serious bodily injury		01/28/03	1 yr 01 mo 12 day
25	Exploitation of Elderly Person	x 3	01/29/03	1 yr 01 mo 10 day
26	Sale of Cocaine; Trafficking Cocaine x 2; Lewd/Lasc Molestation	x 3	01/30/03	1 yr 01 mo 09 day
27	Tamp w/ vic/wit.; Fel. Dom Batt.	x 5	02/03/03	1 yr 01 mo 05 day

State attorneys from other circuits did not provide similar data. It should be noted again that a continuance is not granted without court approval following an opportunity for the state to argue that a continuance should not be granted.

III. Effect of Proposed Changes:

The bill sets forth two different times when a State Attorney can petition the trial court for a speedy trial:

- After the court has granted three defense continuances objected to by the state, in any felony or misdemeanor case where the state has met its obligations under discovery rules; or,
- After certain time limitations have elapsed, which are 125 days in a felony case, and 45 days in a misdemeanor case from the date of the filing of formal charges and the arrest of the defendant or service of a notice to appear in lieu of arrest, where the state has met its obligations under discovery rules.

Within 5 days after the State's Demand for Speedy Trial, the trial court is required to hold a calendar call and schedule trial for not less than 5 days and not more than 45 days following the calendar call.

The trial date may be extended in the following instances:

- The trial court can extend for up to 30 additional days upon a showing by the defendant that a necessary witness or witnesses were properly served but failed to attend a scheduled deposition, even after a subsequent court order.
- The trial court can extend by not less than 30 days or more than 70 days due to the appointment or substitution of counsel due to a conflict of interest or other good legal cause for new counsel shown by the defendant.

The practical impact of this bill may be to reduce the number of unresolved criminal cases.

The act would take effect July 1, 2004. The cases to which it would apply are not specified.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Due Process

The bill does not appear to give the judge discretion on whether to order a defendant to be brought to trial but requires that, upon filing of a demand by the state, a defendant must be brought to trial within a specified amount of time. There may be cases where these time standards do not allow a defendant adequate time, particularly in a complex case, to prepare for trial and may, therefore, be seen as violating a defendant's right to due process.

Specifically, the Sixth Amendment of the U.S. Constitution grants the accused the rights:

To be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor....

A defendant subject to time constraints under a state demand for speedy trial may not have adequate time to take depositions, which may interfere with the right to confrontation provided for in the federal constitution, assuming that portions of depositions will be admitted under cross-examination. Likewise, the defendant may not have sufficient time to secure defense witnesses.

Separation of Powers

Article V, s. 2, Fla. Const., provides that the Supreme Court "shall adopt rules for the practice and procedure in all courts." Just as the Legislature has the power to create substantive law, the court has the power to create rules of practice and procedure in the courts. The court has established rules regarding the procedural aspects enforcing the defendant's right to a speedy trial. To the extent that this bill limits a trial judge's ability to: 1) provide a *fair trial*, or 2) manage its docket, it can be argued that this bill may violate the constitutional requirement that the Supreme Court make rules of practice and procedure in the courts.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although criminal trials could proceed at a faster pace under the provisions of this bill, thereby affording crime victims a quicker initial resolution of their cases, it is predictable that appeals will result from the application of the State's Right to Speedy Trial, and may ultimately result in the cases being overturned or re-tried at a later date. This could, in effect, prolong the victim's involvement in the criminal justice system. To the extent that

the statute is found to be constitutional and is functioning as expected, the effect would be a positive one, from the crime victim's point of view.

C. Government Sector Impact:

This bill has not been analyzed by the Criminal Justice Estimating Conference for potential prison bed impact.

If trial courts are placed in a position of calendaring trials with no regard for available courtroom space or trial judges, as well as other administrative details they are currently likely taking into account, there could be some unforeseen fiscal impact.

Further, to the extent that the State demands speedy trials in cases that have languished on the trial dockets across the state, there could be a need for additional personnel in both the State Attorney's and the Public Defender's offices.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Additionally, the remedy for a defendant who has complied with the provisions of the applicable rule of procedure and is not brought to trial within the prescribed amount of time is the permanent dismissal of charges. Under the provisions of the bill, it is not clear what the remedy would be to the state if the case is not brought to trial within the time limits created.

The remedy provided by the current rule of procedure – dismissal of the charges -- would obviously not be desirable to the state. It may be possible for the state to seek a petition for writ of mandamus from the appropriate District Court of Appeal. "Mandamus is a common law remedy that is used to enforce an established legal right by compelling a public officer to perform a duty required by law. The official duty in question must be ministerial and not discretionary." *Caruso v. Bauble*, 776 So.2d 371, 372 (Fla. 5th DCA 2001); *Woodland v. Lindsey*, 586 So.2d 1255, 1256 (Fla. 4th DCA 1991)("In order for [a] petitioner to be entitled to the issuance of a writ of mandamus the petition must demonstrate the existence of a clear legal right to compel the performance of an indisputable duty."). It cannot be said with any certainty that a District Court of Appeal would order a trial court judge to begin a trial in a case in which there is a dispute over whether the trial can be conducted without violating the defendant's right to due process.

VIII. Amendments:

None.